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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

9 KONSTANTIN G. BULDAKOV,

10 Petitioner,

11 v.

12 A. NEIL CLARK, Field Office Director, U.S.
13 Immigration and Customs Enforcement, *et al.*,

14 Respondents.

Case No. C10-684-RSM

ORDER OF DISMISSAL

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16 This case comes before the Court upon the Report and Recommendation of United
17 States Magistrate Judge James P. Donahue (Dkt 21), petitioner's objection thereto, and
18 petitioner's Motion to Accept Supplemental Pleadings (Dkt 22). The Report and
19 Recommendation advises the Court to deny habeas relief because the petitioner has been
20 detained for less than ninety days following the Ninth Circuit's final order that denied
21 petitioner's petition for review of the Board of Immigration Appeals ("BIA") decision issued
22 against him and lifted the stay of his removal. (Dkt. 21). Detention in such a case is lawful
23 and habeas must be denied.

24 Petitioner moves for leave to file supplemental pleadings, pursuant to Fed. R. Civ. Proc.
25 15(d), due to his having filed a new motion with the BIA to reopen and reinstate the stay of his
26 removal. (Dkt. 22). To allow leave to file supplemental pleadings based on these

1 developments would be futile; the existence of petitioner's renewed motion before the BIA
2 does not make petitioner's detention unlawful. Therefore, this Court, having reviewed
3 petitioner's Petition for Writ of Habeas Corpus, respondents' Return and Motion to Dismiss,
4 the Report and Recommendation of the Honorable James P. Donohue, United States
5 Magistrate Judge, petitioner's Objections to the Report and Recommendations and Motion to
6 Accept Supplemental Pleadings, and the remaining record, finds and Orders as follows:

- 7 1. The Court adopts the Report and Recommendation;
- 8 2. Petitioner's Motion to Accept Supplemental Pleadings (Dkt. 22) is DENIED;
- 9 3. Respondents' motion to dismiss (Dkt. 15) is GRANTED, and this action is
10 DISMISSED with prejudice; and
- 11 4. The Clerk shall send a copy of this Order to the parties and to Judge Donohue.

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13 DATED this 30th day of September, 2010.

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17 RICARDO S. MARTINEZ
18 UNITED STATES DISTRICT JUDGE
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